IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5662 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.H.SHUKLA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNA METALS THRO' POA NATVARLAL KHIMCHANDBHAI MAVANI - Petitioner(s)

Versus

STATE BANK OF SAURASHTRA THRO' B.M - Respondent(s)

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Appearance :

MR MA BUKHARI for Petitioner(s) : 1,MRS KRISHNA G RAWAL for Petitioner(s) : 1,
MR SANDEEP N BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.H.SHUKLA

Date : 18/12/2007

ORAL JUDGMENT

1. Heard learned advocate Mrs. Krishna G. Raval for the petitioner and learned advocate Mr. Sandeep

N. Bhatt, for the respondent.

2. The present petition has been filed by the petitioner challenging the order passed by the learned Civil Judge (JD), Vadhwan, rejecting the application for amendment vide order dated 28.7.2003.

3. The petitioner herein had filed Civil Suit No. 36 of 1995 against the respondent / original defendant for recovering the amount lying deposited in the current account of Rs.4667/-. Thereafter the application for amendment exh. 62 was filed seeking amendment that the amount lying deposited in the current account of the petitioner is Rs.9540/- and therefore, the claim amount in the suit may be permitted to be enhanced from Rs.4669/- to Rs.14209/-. It is contended that the copy of the statement of account / ledger extract of the bank was not supplied and thereafter, as the petitioner came to know about the balance, he preferred application for amendment, which came to be rejected. Therefore, the present petition has been filed.

4. The suit was filed on 30.6.1995 and the period of limitation of three years was to expire on 2.7.1995. This application has been filed thereafter. Meaning thereby, if the suit for the claim could not have been filed after the period of limitation, whether by such amendment, the claim could be permitted to be made after the period of limitation. The learned Civil

Judge (JD) by the impugned order, rejected the application on the ground that it is beyond the period of limitation and therefore, such an amendment cannot be permitted. It is well settled that if the suit for the claim of the amount cannot be filed after the period of limitation, then by such amendment for additional amount subsequently if the claim is permitted, it would be allowing the claim to be made after the period of limitation. Moreover after the suit was filed if the ledger or the statement of account was not available by the defendant Bank, the petitioner / original plaintiff could have, as per the provisions of Code of Civil Procedure, given the notice calling upon the defendant Bank to produce the record and also could have given notice to comply with or reply with regard to the claim. As no such procedure has been followed, and simply after the period of limitation, in the guise of such amendment, if the claim for additional amount, or the further amount is sought to be made, or when the suit could not have been filed by such indirect method, the claim for enhanced amount cannot be permitted to be made. Therefore, the present petition, challenging the impugned order passed by the learned Civil Judge (JD), Vadhwan deserves to be rejected, as the order passed by the learned Civil Judge (JD), Vadhwan below application exh. 62 (for amendment) dated 28.7.2003 is just and

proper and do not call for any interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The present petition stands dismissed, with no order as to costs. Rule discharged.

(R.H.Shukla,J)

Jayanti*